

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 06-1531

---

UNITED STATES OF AMERICA,  
Appellee

v.

DEMOND POETRY BEASON,  
Appellant

---

MOTION TO SUPPLEMENT RECORD ON APPEAL

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1001 Liberty Avenue  
Pittsburgh, PA 15222  
(412) 644-6565

LISA B. FREELAND  
Federal Public Defender

RENEE PIETROPAOLO  
Assistant Federal Public Defender  
Counsel of Record

Attorneys for Appellant,  
Demond Poetry Beason

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA,	)	
Appellee	)	
	)	
v.	)	No. 06-1531
	)	
DEMOND POETRY BEASON,	)	
Appellant	)	

**MOTION TO SUPPLEMENT RECORD ON APPEAL**

AND NOW, comes the appellant, Demond Poetry Beason, by and through his counsel, Renee Pietropaolo, Assistant Federal Public Defender, and respectfully files this Motion to Supplement the Record on Appeal. In support thereof counsel states:

1. Appellant Demond Poetry Beason is filing a Brief for Appellant and Appendix contemporaneously with this Motion.
2. Mr. Beason is appealing a judgment of sentence.
3. Two of Mr. Beason's prior Pennsylvania state convictions - - one for delivery of a non-controlled substance and one for resisting arrest - - were the subject of extensive debate at sentencing. See, e.g., App. 135, 121, 119-24, 107-112, 100-02, 89-91, 93-94, 36, 31; PSR ¶¶35-37.
4. As set forth more fully in the brief for appellant, Mr. Beason argues in pertinent part that neither conviction should have been relied upon as a predicate for career offender enhancement.
5. It appears as though records of both convictions were presented to the district court. See, e.g., App. 121, 135.

Those records were in fact provided by the government to the defense as Rule 16 material.

6. Mr. Beason seeks to Supplement the Record on Appeal with the Criminal Informations filed in state court for both offenses, documents which are of public record: "If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded . . . by the court of appeals". Fed.R.A.P., Rule 10(e).

7. Such documents are appropriate documents of which this Court can take judicial notice. See, e.g., Landy v. Federal Deposit Insurance Corp., 486 F.2d 139 (3d Cir. 1973) (taking judicial notice of complaint filed).

8. Furthermore, this Court has, "on occasion, and without citation to [] conflicting authority . . . employed Rule 10(e) to add to the record material not first presented to the district court." In re Capital Cities/ABC Inc.'s Application for Access to Sealed Documents, 913 F.2d 89, 97 (3d Cir. 1989) (citing, Castle v. Cohen, 840 F.2d 173, 180 n.12 (3d Cir. 1988); Denicola v. G.C. Murphy Co., 562 F.2d 889, 894 n.8 (3d Cir. 1977)) (parentheticals omitted).


9. It also has the inherent equitable power to supplement the record with material not presented to the district court, see id. at 96-98, as well as the power to take judicial notice of any

fact, the existence of which is not factually disputed. United States v. Lowell, 649 F.2 950, 966 (3d Cir. 1981).

10. Accordingly, Mr. Beason hereby respectfully requests that the Court either permit supplementation of the record on appeal with, or take judicial notice of, the attached criminal records.

WHEREFORE, Appellant Demond Poetry Beason respectfully moves the Court to supplement the record on appeal and/or take judicial notice of the attached criminal records.

Respectfully submitted,

  
\_\_\_\_\_  
Renee Pietropaolo  
Assistant Federal Public Defender

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS  
VS. : OF ERIE COUNTY, PENNSYLVANIA  
: CRIMINAL DIVISION  
DEMOND BEASON : NO. 1906 Of 1993  
a/k/a Poncho, a/k/a Poetry : E 160938-1

INFORMATION

The District Attorney of Erie County, by this Information, charges that on (or about) July 30, 1992, in the said County of Erie and State of Pennsylvania, the said DEMOND BEASON a/k/a Poncho a/k/a Poetry unlawfully, feloniously and knowingly delivered a non-controlled substance upon the express or implied representation that the substance is a controlled substance, to-wit: two (2) units of Rocks which he represented same to be Crack Cocaine to Agent David Seda of the Pennsylvania Office of Attorney General, BNIDC, for the amount of \$40.00 U.S. currency, occurring at the 200 Block of East 22nd and Holland Streets, City of Erie, Erie County, Pennsylvania; thereby, the said DEMOND BEASON a/k/a Poncho a/k/a Poetry did commit the crime of VIOLATION OF THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT, Delivery, a Felony.

All of which is against the Act of Assembly and the peace and dignity of the Commonwealth of Pennsylvania.

- (xx) Notice is hereby given, per Pa.R.Crim.P. 1127(B)(1), that this Information will be tried with Information No. 1902 of 1993.
- (xx) Notice is hereby given, per Pa.R.Crim.P. 1127(B)(1), that your case will be tried together with all co-defendant(s) since you are alleged to have participated in the same act or transaction.

35 P.S. 780-113(a)(35)  
Citation of Statute & Section

*Patricia M. Carey*  
Attorney For Commonwealth

Supp. App. 1



IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

Commonwealth (VS) BEASON DEMOND (The Defendant)

Case Number: 1993-01906 OTN: E109381

<u>Count</u>	<u>Information</u>
1	REPRESENTING SUBSTANCE AS CONTROLLE

Trial 3/14/94  
1 GUILTY BY JURY

And now 5/03/94, the Court Sentences the Defendant to pay the following:

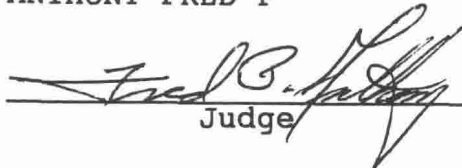
Total Cost & Fines 287.59

and undergo the following imprisonment:


SENTENCE -COST; RESTITUTION; CT 1: WESTERN PENTIENTIARY 1 YEAR TO  
2 YEARS TO BE SERVED CONSECUTIVELY TO DOCKET 1902 OF 1993

The Defendant, shown above, is ordered committed to the WESTERN PENTIENTIARY,  
for compliance with the above sentence.

ANTHONY FRED P

  
Judge

TRUE COPY AS FILED

ATTEST   
DEPUTY CLERK OF COURTS  
COMMISSION EXPIRES THE FIRST MONDAY IN JAN. 2006

CLERK OF RECORDS

MAY 10 3 27 PM '94

CRIMINAL DIVISION  
COUNTY COURTHOUSE  
ERIE, PENNA.

Supp. App. 2

COMMONWEALTH OF PENNSYLVANIA

v.

DEMOND BEASON

INFORMATION

RESISTING ARREST OR OTHER LAW ENFORCEMENT  
18 P.S. 5104  
Misdemeanor of the second degree

PLEA OR TRIAL:

AND NOW, 9/7, 1994, I STATE THAT  
I AM THE DEFENDANT IN THIS MATTER AND THAT I HAVE BEEN  
ARRAIGNED ON THIS CHARGE(S); I AGREE THAT MY RIGHTS HAVE  
BEEN EXPLAINED TO ME AND I HAVE VOLUNTARILY CHOSEN TO PLEAD  
GUILTY/NO CONTEST/NOT GUILTY. 45 CHA620

X Demond Beason  
Defendant

WM  
Attorney for Defendant

ARD:

AND NOW, \_\_\_\_\_, 19\_\_\_\_, I STATE THAT I AM  
THE DEFENDANT IN THIS MATTER AND THAT I UNDERSTAND THE CHARGE(S)  
AGAINST ME; THE PROVISIONS OF THE ARD PROGRAM HAVE BEEN EXPLAINED  
TO ME AND I AM WAIVING MY RIGHT TO A SPEEDY TRIAL UNDER RULE 1100;  
I AGREE TO ARD PLACEMENT AND I HEREBY PLEAD GUILTY TO ALL SUMMARY  
OFFENSES IF APPLICABLE.

Defendant

Attorney for Defendant

PMOV:

AND NOW, \_\_\_\_\_, 19\_\_\_\_, I STATE THAT I AM  
THE DEFENDANT IN THIS MATTER AND THAT I UNDERSTAND THE CHARGE(S)  
AGAINST ME; THE PROVISIONS OF THE PMOV PROGRAM HAVE BEEN EXPLAINED  
TO ME AND I AM FOREVER WAIVING MY RIGHT TO A JURY TRIAL BY PLEADING  
NO CONTEST AND REQUESTING PMOV PLACEMENT; I UNDERSTAND THE  
POSSIBLE MAXIMUM SENTENCE(S) INVOLVED; I AGREE TO PMOV PLACEMENT  
AND I HEREBY PLEAD NO CONTEST TO THIS CHARGE(S).

Defendant

Attorney for Defendant

Supp. App. 3

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

Commonwealth (VS) BEASON DEMOND (The Defendant)

Case Number: 1994-01082 OTN: E1628793

<u>Count</u>	<u>Information</u>
1	RESISTING ARREST

Plea 9/07/94  
1 NO CONTEST

And now 9/21/94, the Court Sentences the Defendant to pay the following:

Total Cost & Fines 221.18

and undergo the following imprisonment:

SENTENCE -  
CT.1; COSTS; 10 MONTHS TO 24 MONTHS SCI AT WESTERN TO BE SERVED  
CONSECUTIVE TO CASE NO. 1906 OF 1993

The Defendant, shown above, is ordered committed to the SCI AT WESTERN,  
for compliance with the above sentence.

DOMITROVICH STEPHANIE

  
Judge

A TRUE COPY AS FILED

ATTEST 

DEPUTY CLERK OF COURTS

MY COMMISSION EXPIRES THE FIRST MONDAY IN JAN. 2006

Supp. App. 4

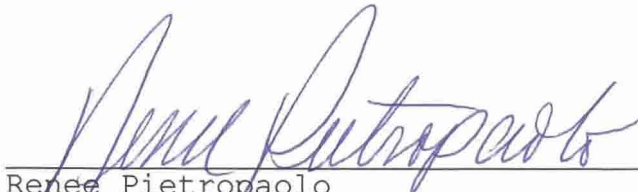


**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion to Supplement Record on Appeal was mailed this 13th day of October, 2006, addressed to the following:

Robert L. Eberhardt  
Assistant United States Attorney  
400 United States Courthouse  
Pittsburgh, Pennsylvania 15219

Demond Poetry Beason  
Register No. 20184-068  
Federal Correctional Institution  
at Allenwood (Medium)  
P.O. Box 2000  
White Deer, Pennsylvania 17887

  
Renee Pietropaolo  
Assistant Federal Public Defender